IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2210-2219 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT AND OTHERS
Versus
MAGANBHAI KODARBHAI SUTHAR AND OTHERS

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Appearance :
Mr ND Gohil, AGP for the appellant
UNSERVED-EXPIRED (R) for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 24/07/2006

COMMON **ORAL JUDGMENT**

By filing these appeals under Section 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure the State has challenged the common judgment and order dated 21.07.1989 passed by the learned Assistant Judge, Sabarkantha at Himatnagar in Land

Acquisition Reference Case Nos.552 of 567 of 1992 by which the said reference cases were partly allowed. The learned Judge has fixed Rs.21 per square meter as the appropriate market value of the land and granted Rs.18.50 as additional amount of compensation and also granted amount of interest and solatium as per law.

So far as First Appeal Nos.2210 of 2001 and 2216 of 2001 are concerned, as per the office endorsement sole respondent has died since long and the State Government has not taken any action in bringing his heirs on record. In this view of the matter, the said appeals are dismissed as having been abated.

So far as the rest of the appeals are concerned, since the respondents have been served, the aforesaid first appeals are being decided on merits by this common judgment and order.

On behalf of the State certain agricultural lands were sought to be acquired for Dharoi-Vatrak Irrigation Project. Section 4 notification was published on 16.7.1988. The Land Acquisition Officer declared his award on 31.7.1990. In his award he fixed the amount of compensation at Rs.2.50 per square meter as against the demand of Rs.100 per square meter. Since the landowners were not satisfied by the aforesaid amount awarded by the Land Acquisition Officer, at their request, the Reference was made to the District Court under Section 18 of the Land Acquisition Act.

The learned Assistant Judge of the District Court, Sabarkantha at Himatnagar who by his judgment and order dated 21st July 1998 allowed the said References partly. The learned Judge after considering the order passed in a similar case at Exhibit 105, which was a judgment of

the District Court in which the proper amount was fixed for the land of the same village at Rs.15 per square meter and considering the time-gap of four years in that case and the present case, additional 10% increase was granted and thereby he ultimately fixed Rs.21 per square meter as the appropriate value of the land in question. Accordingly, after deducting the amount of Rs.2.50 which was granted by the Land Acquisition Officer, additional amount of Rs.18.50 was granted by the learned Assistant Judge, Sabarkantha at Himatnagar vide his judgment and order dated 21st July 1998.

The State has filed 13 appeals against the aforesaid judgment and order passed in Reference Cases out of which these 10 appeals are being disposed of by this common judgment and order. As stated above, in two appeals since the original claimants – respondents had expired and no steps are taken by the State Government by bringing their heirs on record, the said appeals are disposed of as abated.

I have heard Mr ND Gohil, learned AGP for the appellants and I have also perused the record and proceedings.

On behalf of the claimants, one Nareshbhai Maganbhai was examined in Land Reference Case No.561 of 1992. As per the evidence of the said witness, the residential house site plot of the said applicants situated at village Piprana was acquired by the Special Land Acquisition Officer. The said witness has stated that the area in question is surrounded by Dairy, School, Cooperative Society, etc. A reference is also made on behalf of the claimants regarding the judgment given by the District Court, Sabarkantha at Himatnagar in Land Acquisition Reference Case No.396 of 1987 dated 12.7.1993 a copy of which is produced on record at Exhibit 23. In the said case the house site land of

the same village was acquired for Vatrak Irrigation Scheme and Notification under Section 4 of the Act was published on 12.12.1983. In the said case the District Court has granted Rs.15 per square meter by considering various sale instances. It is not in dispute that similar type of land and of the same village is acquired in the present cases also. The said judgment, therefore, to an extent, can be treated as a comparable piece of evidence on record.

Learned advocate Mr Gohil has relied on Exhibit 27 and 28 by which amount of Rs.11 per square meter was fixed. On that basis, the Talati-cum-Mantri of the village was examined at Exhibit 26. The said witness had stated on oath that the Government had sold the house site village by public auction, a copy of which was produced at Exhibit 27. The said house site land of the village Piparna was sold at Rs.9 per square meter. Learned AGP, Mr Gohil has relied upon the said document to substantiate his say that the price fixed at Rs.11 should be taken as a basis and at the most Rs.11 per square meter should be fixed as the appropriate price per square meter.

It is required to be noted that as far as documents at Exhibit 26 and 27 are concerned, the same cannot be considered for fixing the appropriate price of the land in question. It is not in dispute that the said amount was fixed on the basis of public auction and the same can be said to be a distress price, which cannot be said to be prevailing appropriate market value of the said land. If any price is received by way of compulsory sale by putting the property into public auction, such price cannot reflect the correct market value of the land, as it is a sale under compulsion. Therefore, any document relating to transaction of sale through public auction cannot be treated as a referable document unless there is a genuine sale transaction. Such sale instance cannot be

relied upon by the Court. Under the circumstances, aforesaid documents at Exhibit 26 and 27 cannot be said to be reflecting correct price as the property in question was disposed of by way of public auction and, therefore, no weightage can be given to aforesaid documents.

If the said documents are excluded from the consideration, the only documents which are available are the judgment of the District Judge wherein the amount was fixed at Rs.15 per square meter. However, as discussed earlier, in the aforesaid case the notification under Section 4 was issued on 12.12.1983 while in the instant case it was issued on 16.7.1988 i.e. after a period of four-and-half years. The learned Judge of the Reference Court was therefore perfectly justified in giving 10% appreciation and has rightly fixed Rs.21 as the correct figure for finding out the correct market value of the land in question. Considering the aforesaid aspect of the matter, the fixation of the price regarding land in question is based on evidence on record i.e. on the basis of the earlier order delivered by the District Court at Exhibit 23. The learned Judge has, therefore, arrived at the appropriate value of the land by relying upon the said judgment. These appeals are therefore without any substance and hence the same deserve to be dismissed.

There is also additional point on which these appeals are liable to be dismissed. It is pertinent to note that the net additional amount payable to the claimants in these appeals is a very small amount as in none of the cases the additional amount awarded exceeds Rs.5,100, which is evident from the following table:-

Sr No	LAR No.	F.A. No.	Addl.Amt. Of Comensation	30% Solatium	12% Market Value	Total Amt of Addl. Compensation
1	556/1992	2210/01	1847.04	554.11	411.10	2812.25
2	557/1992	2211/01	3157.21	947.16	702.73	4807.10
3	558/1992	2212/01	3157.21	947.16	702.73	4807.10
4	560/1992	2213/01	3157.21	947.16	702.73	4807.10
5	561/1992	2214/01	2026.23	907.87	637.56	4571.66
6	562/1992	2215/01	1944.72	583.42	432.85	2960.99
7	563/1992	2216/01	3330.00	999.00	741.17	5070.17
8	565/1992	2217/01	1731.97	519.59	385.49	2637.05
9	566/1992	2218/01	2564.10	769.23	570.70	3904.03
10	567/1992	2219/01	2564.10	769.23	570.70	3904.03

In that view of the matter, the refrerence is required to be made to various judgments of this Court. The learned Single Judge of this Court in First Appeal No.1117 of 2003 has observed in paragraphs nos.3 and 4 as under:-

> *"3. It may be noted that learned single Judge of this Court as well as a Division Bench of this Court in number of matters have dismissed appeals filed by the appellant challenging the awards of the reference courts on the ground of smallness of the amount. The Division Bench of this Court (Coram: M.H. Kadri & C.K. Buch, JJ.) in First Appeal Nos.6765 of 1999 to 6804 of 1999 vide judgment dated 29.3.2000 has considered an amount of Rs.25,500/- awarded to the claimant, without considering other statutory benefits, as small amount. In the said judgment it has been observed that it is the consistent practice which is followed by various Division Benches of this Court that wherein claim involved in the Land References cases is less than Rs.35,000/-, appeal should be dismissed on the ground that it involves petty claim.*

> *4. Applying the principles laid down by the Division Bench of this Court in the judgment recorded in First Appeal Nos.6765 of 1999 to 6804 of 1999 to the facts of the present case, in the instant case, the original amount awarded to the respondent is Rs.11,425/- plus statutory benefits, which comes in all to Rs.16,223.50 and, therefore, this amount being a small amount, the appeal deserves to be dismissed on the ground of petty claim."*

It is not in dispute that the additional amount for which the appeal is filed in the Court is small amount and considering the decision of this Court referred to above these appeal deserve to be dismissed.

Considering the aforesaid aspect of the matter, I do not find any substance in this group of first appeals. Hence, all these appeals are dismissed with no order as to costs. Record and proceedings be sent to to the lower court forthwith.

(***P.B.Majmudar, J.***)

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